

REMARKS

Claims 1-3, 5-12, 14-23 and 25-32 are pending, with claims 1, 10, 19, and 25 being independent. Claims 2, 3, 5-9, and 30 have been amended. No new matter has been added. Reconsideration and allowance of the above-referenced application are respectfully requested.

Objections to the Claims

The Office's objections to the claims have been addressed. Claims 2, 3, 5-9, and 30 have been amended to obviate these objections. Thus, withdrawal of the objections to claims 2, 3, 5-9, and 30 is respectfully requested.

Rejections Under 35 U.S.C. § 112, first paragraph

Claims 3 and 27 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. The Office's contention that the limitation "about one day" renders claims 3 and 27 indefinite is respectfully traversed. One skilled in the art would understand the meaning of "about one day" given the original disclosure. For example, Applicant discloses that "[d]uring the development of a software product, the resources needed to correctly install the product can change regularly, often on a daily basis." (Emphasis added; page 7, paragraph [0026] of the application as filed.) Therefore, withdrawal of the rejections of claims 3 and 27 under 35 U.S.C. § 112, second paragraph is respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 1-3, 5-12, 14-18, and 25-32 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,738,970 issued to Kruger et al. (hereinafter "Kruger") in view of U.S. Patent No. 6,560,776 issued to Breggin et al. (hereinafter "Breggin").

Claims 19, 20, 22 and 23 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Breggin in view of Kruger.

Claim 21 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Breggin in view of Kruger, and further in view of U.S. Patent Publication No. 2002/0156831 issued to Suorsa et al. (hereinafter "Suorsa").

These rejections and their underlying rationale are traversed. Applicant's claims are allowable over any combination of these references. For example, the proposed Kruger-Breggin

combination does not teach each and every limitation of claim 1. Claim 1, for example, recites, among other features: “generating a comparison of a current software installation, to a target computer, with a previous software installation, to the same target computer, in a series of two or more software installations during a software product development” Thus, claim 1 requires that the comparison of the software installation be generated **during a software product development.**

The Office acknowledges that “Kruger does not disclose software product development” (Office Action dated 11/28/2007 at page 5, lines 17-18) and then relies on Breggin for the deficiency of Kruger. Contrary to the Office’s contention, the cited portion of Breggin (col. 3 line 66 to col. 4 line 6) describes an “installation analysis tool that creates a verification or installation database based on an analysis of the install program before the installation” (col. 3, lines 60-63), and does not disclose a software product development. In fact, nowhere does Breggin disclose a “software product development” as required by claim 1. Thus, the proposed Kruger-Breggin combination does not teach or suggest “generating a comparison of a current software installation, to a target computer, with a previous software installation, to the same target computer, in a series of two or more software installations during a software product development” as recited in claim 1.

Additionally, as noted in the previous reply to Office Action dated 06/04/2007, Kruger does not teach or suggest “creating installation data for a resource, based at least in part on the comparison, the resource including attributes **including a dynamic attribute and a static attribute**, the **dynamic attribute is an attribute that should have changed** between the previous software installation and the current software installation, the **static attribute is an attribute that should remain unchanged** between the previous software installation and the current software installation” (emphases added) as recited in claim 1. In response to the Applicant’s arguments, the Office states that “Kruger discloses a dynamic attribute and a static attribute” (Office Action dated 11/28/2007 at page 21, lines 21-22) and then cites two portions from Kruger (col. 5, lines 18-29 and col. 6, lines 51-58) in support of the Office’s response. However, the cited portions of Kruger merely disclose creating a tree having nodes representing

files; in fact, Kruger is silent on creating installation data for a resource that has a dynamic attribute, which is an attribute that should have changed between successive installations on the same target computer. The Office, however, fails to meet its burden of establishing a prima facie case of obviousness because the Office has not identified what aspects of the cited portions of Kruger can be equated with the dynamic attribute and the static attribute of claim 1.

Furthermore, as noted in the previous reply to Office Action dated 06/04/2007, Kruger does not teach or suggest "identifying from the installation data the dynamic attribute that was not changed in the current software installation" (emphasis added) as recited in claim 1. Claim 1 requires the identification from the installation data attributes that should have changed, but was not changed, between successive installations on the same target computer. In response to the Applicant's arguments, the Office states that "Kruger discloses identifying from the installation data the dynamic attribute that was not changed in the current software installation" (Office Action dated 11/28/2007 at page 22, lines 5-6) and then cites a portion of Kruger (col. 8, 34-40) in support of the Office's response.

Contrary to the Office's assertion, the cited portion of Kruger merely discloses that a difference calculator marks the terminal node in the tree it creates as the "same," which denotes that the state represented by the terminal node did not change when the new software was installed. Kruger's identification of a state that did not change during a software installation is not the same as the dynamic attribute required in claim 1 because Kruger does not disclose that such unchanged state should have changed, but was not changed. Thus, Kruger simply does not teach or suggest identifying a dynamic attribute that was not changed. In addition, the Office fails to meet its burden of establishing a prima facie case of obviousness because the Office has not identified what aspects of the cited portion of Kruger teaches or suggests identifying dynamic attributes that should have changed but was not changed for a given resource associated with a software installation.

Moreover, the Office acknowledges that Kruger does not disclose "presenting potential problems with the current software installation based on the identified dynamic attribute to facilitate verification of an installer for the software product development." (Office Action dated

11/28/2007 at page 5, lines 19-21) and then relies on Breggin for this missing feature. As noted in the Applicant's previous reply to Office Action dated 06/04/2007, Breggin, however, does not cure this deficiency of Kruger. Breggin explicitly states that, "An 'exception' is typically a difference between corresponding fields in the installation and installed databases or files." (*See* Breggin at col. 9, lines 58-60.) Nothing in Breggin teaches or suggests presenting potential problems with a current software installation based on an identified dynamic attribute, where the dynamic attribute is an attribute that should have changed between the previous software installation and the current software installation, but that did not change, as expected.

The Office cites *In re Keller* in response to the Applicant's arguments. (*See* Office Action dated 11/28/2007 at page 23, lines 8-11.) The Applicant, however, is not arguing that prior art devices are not physically combinable; instead, the Applicant respectfully submits that the prior art references themselves do not teach or suggest the required limitation of claim 1. For example, in response to the Applicant's arguments, the Office states that "Kruger discloses the identified dynamic attribute ... and Breggin is relied upon for its specific teaching of presenting potential problems with the current installation." (Office Action dated 11/28/2007 at page 23, lines 22-24.) However, as noted above, Kruger fails to teach or suggests dynamic attributes, let alone identifying such dynamic attributes. Further, the proper test is "what the combined teaching of [the] references would have suggested to those of ordinary skill in the art." *See* MPEP §2145, citing *In re Keller*. Since Breggin's exception relates to a difference, the combined teaching do not suggest presenting potential problems based on the absence of an expected difference.

Therefore, the proposed Kruger-Breggin combination does not teach or suggest each and every limitation of claim 1, and claim 1 should be in condition for allowance. Independent claims 10 and 25 recite similar limitations as claim 1; thus, should be in condition for allowance for at least similar reasons as discussed above. Claims 2-3, 5-9, 11-12, 14-18 depend generally from claim 1, 10, or 25, and are allowable for at least the reasons provided above.

In addition, a prima facie case of obviousness has not been established with respect to claim 19 because the suggested Breggin-Kruger combination does not teach or suggest all the

elements of claim 19. For example, the Office states that Breggin fails to disclose "a dynamic attribute and a static attribute for one or more resources associated with a software installer" and then turns to Kruger to cure the deficiencies of Breggin. However, as discussed above, Kruger also does not teach or suggest "a dynamic attribute and a static attribute for one or more resources associated with a software installer" as recited in claim 19. Therefore, the suggested Breggin-Kruger combination does not teach or suggest all the elements of claim 19, and claim 19 should be allowed.

Claims 20-23 depend from independent claim 19, and these dependent claims are allowable for at least the reasons provided above.

Thus, all the pending claims are allowable for at least the reasons provided above.

The foregoing comments made with respect to the positions taken by the Office are not to be construed as acquiescence with other positions of the Office that have not been explicitly contested. Accordingly, the above arguments for patentability of a claim should not be construed as implying that there are not other valid reasons for patentability of that claim or other claims.

In view of the above, a notice of allowance is respectfully requested. In the absence of such, a telephone interview with the Examiner, to discuss the subject matter of the independent claims and the cited art, is respectfully requested.

No fee is believed to be due, however please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: February 26, 2008

/Cheng C. Ko/

Cheng C. Ko

Reg. No. 54,227

Fish & Richardson P.C.
PTO Customer No. 021876
Telephone: (858) 678-5070
Facsimile: (858) 678-5099